

AMENDED IN ASSEMBLY JANUARY 26, 2006

AMENDED IN ASSEMBLY JANUARY 5, 2006

AMENDED IN ASSEMBLY JANUARY 4, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 673

Introduced by Assembly Member Klehs

February 17, 2005

An act to add and repeal Article 7.5 (commencing with Section 19188) of Chapter 4 of Part 10.2 of Division 2 ~~to~~ of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 673, as amended, Klehs. Administration of taxes: petroleum: penalties.

Existing law imposes an income tax on individuals, businesses, and corporations and provides for the imposition of penalties on individuals, businesses, and corporations with respect to those taxes.

The bill would provide for the imposition of a petroleum windfall profits penalty, as specified, on a taxpayer that is either a petroleum producer or petroleum refiner, as defined, at the rate of 2.5% on windfall profits, as defined. This bill would repeal these provisions on January 1, ~~2009~~ 2010.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 7.5 (commencing with Section 19188) is
2 added to Chapter 4 of Part 10.2 of Division 2 of the Revenue and
3 Taxation Code, to read:

4
5 Article 7.5. Petroleum Windfall Profits Penalty
6

7 19188. (a) In addition to any tax imposed under Part 10
8 (commencing with Section 17001) or Part 11 (commencing with
9 Section 23001), for any taxable year beginning on or after
10 January 1, 2005, and before January 1, 2009, there is hereby
11 imposed a petroleum windfall profits penalty on the windfall
12 profits realized by a taxpayer that is a petroleum producer or
13 petroleum refiner.

14 (b) The petroleum windfall profits penalty is imposed at the
15 rate of 2.5 percent on windfall profits of a petroleum producer or
16 petroleum refiner.

17 19188.1. For purposes of this article:

18 (a) "Adjusted net income" means business income apportioned
19 to California before any otherwise allowable deduction for net
20 operating loss carryovers under Section 17201, as modified by
21 Section 17276, or under Section 24416.

22 (b) "Base year adjusted net income" means the aggregate
23 business income apportioned to California, before any otherwise
24 allowable deduction for net operating loss carryovers under
25 Section 17201, as modified by Section 17276, or under Section
26 24416, over the five immediately preceding taxable years,
27 ~~divided by five. For purposes of five, with the product then~~
28 ~~multiplied by the growth factor. For purposes of calculating the~~
29 ~~numerator of this computation, if the petroleum producer or~~
30 ~~petroleum refiner has been in existence for fewer than five years,~~
31 ~~its aggregate business income apportioned to California, before~~
32 ~~any otherwise allowable deduction for net operating loss~~
33 ~~carryovers under Section 17201, as modified by Section 17276,~~

1 or under Section 24416, shall each be multiplied by five and
2 divided by the number of years of its existence.

3 (c) “Growth factor” means the percent change of annual
4 growth in the quantity of gallons of petroleum sold in California
5 by the taxpayer from the previous year. “Growth factor” shall be
6 determined as follows:

7 (1) Determine the percent change of the total number of
8 gallons of petroleum sold by the taxpayer in this state from the
9 immediately preceding taxable year to the current taxable year.

10 (2) Express the percent determined under paragraph (1) as a
11 decimal rounded to the nearest hundredth.

12 (3) Multiply the amount described in paragraph (2) by three.

13 (4) Add one to the product determined by paragraph (3).

14 (e)

15 (d) “Petroleum producer” is any person engaged in those lines
16 of business described in Code 211 of the North American
17 Industry Classification System Manual published by the United
18 States Office of Management and Budget, 2002 Edition.
19 “Petroleum producer” does not include a petroleum producer that
20 extracts 100 barrels or less of crude oil per day, on average,
21 during the current taxable year.

22 (d)

23 (e) “Petroleum refiner” is any person engaged in those lines of
24 business described in Code 32411 of the North American
25 Industry Classification System Manual published by the United
26 States Office of Management and Budget, 2002 Edition.

27 (e)

28 (f) “Windfall profits” means the adjusted net income for the
29 current taxable year in excess of the base year adjusted net
30 income.

31 19188.2. The Franchise Tax Board may prescribe rules and
32 regulations necessary to implement the provisions of this article,
33 including any rules and regulations necessary to ensure that the
34 base year adjusted net income is appropriately modified to take
35 into account any mergers, acquisitions, and divestitures occurring
36 during the base year adjusted net income period.

37 19188.3. The penalty imposed pursuant to this article shall be
38 imposed and collected in the same manner as the taxes imposed
39 pursuant to Part 10 (commencing with Section 17001) or Part 11
40 (commencing with Section 23001).

1 19188.4. This article shall remain in effect only until January
2 1,~~2009~~ 2010, and as of that date is repealed, unless a later
3 enacted statute, that is enacted before January 1,~~2009~~ 2010,
4 deletes or extends that date.

5 SEC. 2. This act provides for a tax levy within the meaning of
6 Article IV of the Constitution and shall go into immediate effect.